

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

Section 3406(b), Mediterranean Fruit Fly Interior Quarantine

INITIAL STATEMENT OF REASONS/
POLICY STATEMENT OVERVIEW

Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance
the Regulation is Intended to Address

These regulations are intended to address the obligation of the Secretary of Food and Agriculture to protect the agricultural industry of California from the movement and spread within California of injurious plant pests.

Specific Purpose and Factual Basis

The specific purpose of Section 3406 is to provide for the State to regulate the movement and possible carriers of Mediterranean fruit fly from the area under quarantine to prevent the artificial spread of the fly to noninfested areas to protect California's agricultural industry.

The factual basis for the determination by the Department that amendment of Section 3406 is necessary is as follows:

The Secretary may establish, maintain, and enforce those regulations he deems necessary to protect the agricultural industry from pests and to exterminate or prevent the spread of pests. The Secretary has determined that it is no longer necessary to maintain and enforce these regulations based upon the following:

Existing Section 3406 established an interior quarantine against Mediterranean fruit fly, provided that portions of Los Angeles, San Bernardino and Santa Clara counties are under quarantine for Mediterranean fruit fly, set forth the hosts, restricts the movement of hosts and possible carriers of Mediterranean fruit fly from the area under quarantine and provided for special permits to allow movement of articles and commodities otherwise prohibited.

Mediterranean fruit fly is a serious pest that attacks the fruit of various plants including apple, apricot, avocado, cherry, citrus, nectarine, peach, pear, pepper, plum, tomato and many kinds of ornamental plants. The female punctures host fruit and/or plants to lay eggs that develop into larvae. The punctures admit decay organisms that may cause tissue breakdown. Larval feeding causes tissue breakdown of fruit. Fruit with egg punctures or larval feeding are generally unfit for human consumption.

Section 3406(b) was amended on October 7, 17, and 25; November 23; and, December 28, 2005. These emergency amendments established an initial quarantine area in San Bernardino County which grew to include portions of Los Angeles County. Since then, the insect sterile release technique was used against the Mediterranean fruit fly for three life cycles and a subsequent intensive survey for adults was conducted for an additional life cycle without any additional finds of the fly. Therefore, Mediterranean fruit fly was declared eradicated from the State on September 1, 2006.

Section 3406(b) was amended on October 10, 2005. This emergency amendment established a quarantine area in Santa Clara County of approximately 77 square miles surrounding the Mediterranean fruit fly infestation in the San Jose area of Santa Clara County. Since then, the insect sterile release technique was used against the Mediterranean fruit fly for three life cycles and a subsequent intensive survey for adults was conducted for an additional life cycle without any additional finds of the fly. Therefore, Mediterranean fruit fly was declared eradicated from the State on September 6, 2006.

The amendment of Section 3406(b) that removed the Los Angeles and San Bernardino counties from the area under quarantine for Mediterranean fruit fly was effective September 5, 2006. The fly was eradicated from that area on September 1, 2006; therefore, it is no longer necessary to regulate the movement of hosts and possible carriers of the fly from this area. It was necessary to amend this regulation to remove the quarantine on the Los Angeles and San Bernardino counties area and remove the restrictions on the movement of hosts and possible carriers that are now unnecessary.

The amendment of Section 3406(b) that removed the Santa Clara County area under quarantine for Mediterranean fruit fly was effective September 12, 2006. The fly was eradicated from that area on September 6, 2006; therefore, it is no longer necessary to regulate the movement of hosts and possible carriers of the fly from this area. It was necessary to amend this regulation to remove the quarantine on the Santa Clara County area and remove the restrictions on the movement of hosts and possible carriers that are now unnecessary.

Because this fly is repeatedly introduced into California with several infestations requiring quarantine action, the Department proposes to retain the regulation text and insert the word “reserved” in subsection (b). By this action, the regulation may be simply amended to add a new quarantine area description when a new infestation is detected without continuing restrictions for areas from which the fly has been eradicated.

Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

The Department of Food and Agriculture has determined that Section 3406 does not impose a mandate on local agencies or school districts, except that an agricultural commissioner of a county under quarantine has a duty to enforce Section 3406. No reimbursement is required for Section 3406 under Section 177561 of the Government Code because these amendments remove the portions of Los Angeles, San Bernardino and Santa Clara counties that were in the area under quarantine from the regulation; therefore, enforcement is no longer necessary. There are no mandated costs associated with the removal of these areas from the regulation.

The Department also has determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The Department has determined that the proposed action will not have a significant adverse economic impact on housing costs or California businesses, including the ability of California businesses to compete with businesses in other states. The Department's determination that this action will not have a significant adverse economic impact on businesses was based on the following:

The amendment of Section 3406 (b) will remove any requirements or restrictions on businesses in the areas of Los Angeles, San Bernardino and Santa Clara counties and that should have a positive impact on businesses in that area. The amendment of this regulation will remove the State authority for quarantine activities and compliance by businesses in the area.

Assessment

The Department has made an assessment that repealing these regulations would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

Alternatives Considered

The Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Information Relied Upon

The Department is relying upon the following studies, reports, and documents in the amendment of Section 3406(b):

Two memorandums of August 25, 2006 to John Connell from Debby Tanouye.